

No. 23-15285

ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 11, 2023

IN THE
**United States Court of Appeals
for the Ninth Circuit**

IN RE GOOGLE PLAY STORE ANTITRUST LITIGATION
MARY CARR, ET AL. V. GOOGLE LLC, ET AL.

Interlocutory Appeal from the
United States District Court for the Northern District of California
No. 21-md-2981; No. 20-cv-5761
District Judge James Donato

**REPLY IN SUPPORT OF APPELLANTS' MOTION FOR LIMITED
REMAND UNDER FEDERAL RULE OF APPELLATE PROCEDURE
12.1(b) AND TO REMOVE THIS CASE FROM THE ORAL ARGUMENT
CALENDAR FOR SEPTEMBER 11, 2023**

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August 29, 2023

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), Defendants-Appellants state as follows:

Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company; no publicly traded company holds more than 10% of Alphabet Inc.'s stock.

Google Payment Corp. is a subsidiary of Google LLC. Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company; no publicly traded company holds more than 10% of Alphabet Inc.'s stock.

Google Commerce Ltd. is an indirect subsidiary of Google LLC. Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company; no publicly traded company owns more than 10% of Alphabet Inc.'s stock.

Google Ireland Limited is an indirect subsidiary of Google LLC. Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company; no publicly traded company owns more than 10% of Alphabet Inc.'s stock.

Google Asia Pacific Pte. Ltd. is an indirect subsidiary of Google LLC. Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc.,

a publicly traded company; no publicly traded company owns more than 10% of Alphabet Inc.'s stock.

/s/ Neal Kumar Katyal
Neal Kumar Katyal

The parties agree on what should happen in this Court now: This Court should issue a limited remand, with this Court retaining jurisdiction, under Federal Rule of Appellate Procedure 12.1, and it should remove the case from the imminent September 11, 2023 argument calendar.

Plaintiffs indicate (at 1) that, on remand, they will ask the District Court to exercise “discretion after hearing from the parties” to diverge from the District Court’s indicative ruling in the “Order re Decertification and Class Notice,” where it stated that “the order granting certification should be vacated.” ECF 589. But the plain language of the District Court’s indicative ruling is a clear expression of the District Court’s intent as to how it would rule if it had authority to do so, and this Court should issue a limited remand order so that the District Court can take action consistent with that clear intention. Given Plaintiffs’ suggestion that they may oppose decertification, the Court should also retain jurisdiction as contemplated by Rule 12.1 until the District Court has ruled.

In addition, Google disagrees with Plaintiffs’ suggestion (at 2) that this Court should dismiss this appeal “[o]nce the District Court takes further steps in accordance with its orders” unless the further step taken by the District Court is to decertify the class. This Court does not need to take up the question of next steps in this appeal, however, until the District Court has ruled and Google has notified this Court of the ruling. *See* Fed. R. App. P. 12.1(b) (discussing this procedure).

CONCLUSION

For the foregoing reasons, and those in Google's motion, Google respectfully requests that this Court issue a limited remand, while retaining jurisdiction, so that the District Court can decertify the class as contemplated by its August 28, 2023, order. Google also requests that this Court remove this case from the upcoming oral argument calendar set for Monday, September 11, 2023.

Respectfully submitted,

August 29, 2023

/s/ Neal Kumar Katyal

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2)(C) and 9th Circuit Rule 27-1 because it contains 317 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 27(a)(2)(B).

This motion complies with the typeface and typestyle requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in Times New Roman 14-point font.

/s/ Neal Kumar Katyal
Neal Kumar Katyal

CERTIFICATE OF SERVICE

I certify that on August 29, 2023, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ Neal Kumar Katyal
Neal Kumar Katyal